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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PREFERRED CAPITAL
LENDING, INC., an Illinois
Corporation; and PREFERRED
CAPITAL LENDING OF
NEVADA, LLC, a Nevada Limited
Liability Company,

Plaintiffs,

vs.

STEPHEN D. CHAKWIN, JR., an
Individual; DOES I through X
inclusive; ROE BUSINESS
ENTITY XI through XX, inclusive,

Defendants.

Case No.: 2:13-CV-00368-GMN-NJK

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
EXCLUDE PLAINTIFFS'
IMPROPER SUPPLEMENTAL
REPLY [ECF NO. 42]**

PLEASE TAKE NOTICE that on December 20, 2013 at 9:30 a.m., or as soon thereafter as the matter may be heard by the Honorable Gloria M. Navarro of the United States District Court for the District of Nevada, located at 333 S. Las Vegas Boulevard, Las Vegas, Nevada, 89101, Defendant Stephen D. Chakwin, Jr. will, and hereby does, move to exclude Plaintiffs' Preferred Capital Lending, Inc.'s and Preferred Capital Lending of Nevada, LLC's filing dated December 9, 2013

styled “Supplemental Reply to Defendant’s Opposition to Plaintiffs’ Motion for Adverse Inference and for Summary Judgment on Plaintiff’s First and Second Causes of Action; And Opposition to Defendant’s Cross-Motion for Summary Judgment” [ECF No. 42] (the “Surreply”) in its entirety because it is procedurally improper.

This motion is brought on the grounds that Plaintiffs’ Surreply is not authorized under the Federal Rules of Civil Procedure, the Court’s Local Rules, or by order of this Court. Plaintiffs’ Surreply is therefore procedurally improper and should be stricken or excluded in its entirety. Furthermore, the Surreply must be excluded because it impermissibly seeks to advance new, inconsistent legal arguments and includes as exhibits documents that Plaintiffs failed to produce at any time during discovery. In the alternative, Defendant respectfully seeks leave of this Court to file an appropriate response to Plaintiffs’ Surreply.

This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the pleadings and other papers filed in this action, and upon such other argument and evidence as may be presented to the Court.

DATED: December 13, 2013
New York, New York

FRANKFURT KURNIT KLEIN & SELZ PC

By: /s/ Ronald C. Minkoff

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